IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 2839 of 2005

Between:

Cherukuri Padma, W/o. Krishna Rao, Hindu,
Fair Price Shop Dealer, Dappalapadu Village, Gudlur Mandal, Prakasam District.

..... PETITIONER

AND

1 The Joint Collector, Prakasam District at Ongole.
2 The Revenue Divisional Officer, Kandukur, Prakasam District.
3 The Mandal Revenue Officer, Gudlur Mandal, Prakasam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the natur of Writ of Mandamus declaring the order of the Revenue Divisional Officer, Kandukur, Prakasam District, the 2nd respondent herein issued in his proceedings in Rcf/2300/2004 dated 8-10-2004 suspending the dealership authorisation and consequential order of the Joint Collector, Ongole, Prakasam District Proceedings in D.Dis/4276/2004 dated 22-12-2004 remanding the matter and confirming the order of the 2nd respondent in respect of suspension of Fair Price Shop Dealership authorisation of the petitioner as arbitrary, mala ide, illegal, improper, unconstitutional and consequently set aside the same, thereby enabling the petitioner to continue as permanent Fair Price Shop Dealer of Dappalampadu Village, Gudlur Mandal, Prakasam District.

Counsel for the Petitioner:MR.RAJANIKANTH JWALA

Counsel for the Respondents: GP FOR CIVIL SUPPLIES

The Court at the admission stage made the following :

ORDER:

The authorization of the petitioner as a fair price shop dealer was suspended by the 2nd respondent through his order dated 08.10.2004. Aggrieved thereby, the petitioner preferred an appeal before the 1st respondent. The appeal was dismissed on 22.12.2005. The petitioner challenges the same in this writ petition.

Heard the learned counsel for the petitioner and the learned Government Pleader for Civil Supplies.

The 2nd respondent issued a show cause notice dated 10.09.2004. As many as six allegations were levelled against the petitioner. She responded to the same through her explanation, dated 28.09.2004. Taking the same into account, the 2nd respondent passed an order, dated 08.10.2004, suspending the authorization of the petitioner.

Clause 5(4) of the A.P.State Public Distribution System Control Order, 2001 provides for suspension or cancellation of authorization as a measure of penalty. Before such a step is taken, a notice is required to be issued. Inasmuch as the 2nd respondent suspended the authorization of the petitioner after issuing show cause notice and on a consideration of the explanation, it has to be treated as a substantive penalty. Suspension pending enquiry can be ordered only in contemplation of issuance of show cause notice and passing a final order.

By its very nature, suspension, as a measure of penalty, can be for a specified period. It cannot be for an indefinite period. In such an event, it tends to become an order of cancellation. The 2nd respondent, however, has chosen to suspend the authorization of the petitioner, pending enquiry, though he has conducted the enquiry by issuing show cause notice. Once it was imposed after conducting enquiry, it has to be treated as a substantive penalty and in such an event it has to be for a specified period. These aspects, however, were not adverted to by the 1st respondent, obviously because they were not properly canvassed before him.

For the foregoing reasons, this Court is of the view that suspension ordered against the petitioner through order, dated 08.10.2004, deserves to be treated as a

substantive penalty and in the ordinary course of things, it cannot exceed a period of three months. Inasmuch as the period of three months have lapsed, the suspension of the petitioner shall cease to be operative. Hence, the petitioner shall be entitled to function as dealer. It is however made clear that in case the petitioner resorts to any irregularities, it shall be open to the respondents to take further steps, in accordance with law. The writ petition is allowed. No costs.

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17.02.2005

Note: Issue C.C. in two days.

(B/o)

Jsu

To

1 The Joint Collector, Prakasam District at Ongole.
2 The Revenue Divisional Officer, Kandukur, Prakasam District.
3 The Mandal Revenue Officer, Gudlur Mandal, Prakasam District

4 2 CCs to the G.P. for Civil Supplies, High Court Buildings, Hyderabad. (OUT)

5 2 CD copies.